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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,353	02/05/2001	Patrick Steven Cunningham	3201P2284	5161
23504	7590	10/04/2005	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			KYLE, CHARLES R	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/777,353	CUNNINGHAM, PATRICK STEVEN	
Examiner	Art Unit		
Charles Kyle	3624		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 February 2001.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-7 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-7 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/31/2003

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-7** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. They recite the phrase "applying for an application for payment", which is redundant and unclear. They also recite the word "ben" which appears intended as "been".

**Claims 1-7** a system in the preamble and method steps in the body of the Claims. The nature of the Claims as either apparatus or method is unclear and amendment to clarify is needed.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1** are rejected under 35 U.S.C. 102(e) as being anticipated by US2002/0077967

*Ingram.*

**As to Claim 1,** *Ingram* discloses the invention as claimed, including in an application and payment method for lenders and builders the steps of:

- establishing an electronic database on a host server by a lender (para. 48);
- sending an account number and a password by the lender builder when the builder has been approved for credit (Fig. 4, ele. 64 and related text);
- accessing a construction project account electronic database by entering the account number and the password(para. 48);
- entering and submitting electronically information related to the construction project (para. 49);
- determination of approval of construction loan by the lender based on the information related to the construction project (Fig 3C, ele. 58 and related text);
- applying for an application for payment if the construction loan is approved (Fig. 3A, ele 46 and related text); and
- transferring monetary funds to the builder after application for payment is submitted and approved (Fig. 3C, ele. 60 and related text).

**As to Claim 2,** *Ingram* discloses the recited limitation at Fig. 8 and para. 48, and related text.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over US2002/0077967 *Ingram* in view of US 4,700,318 *Ockman*.

**As to Claim 3,** *Ingram* discloses the invention substantially as claimed. See the discussion of Claim 2. *Ingram* does not specifically disclose submission of the recited information related to payment instructions. *Ockman* discloses such information at Col. 5, lines 4-11 and Col. 8, line 26 to Col. 9, line 63. It would have been obvious to one of ordinary skill in that art at the time of the invention to provide the information disclosed by *Ockman* in the method of *Ingram* to facilitate the loan draws disclosed by *Ockman* at Col. 5, lines 4-11 as progress payments. Such information would provide evidence to a lender that the builder's expenditure claims were provided a correct basis for payment.

**As to Claim 4,** *Ockman* discloses the recited limitations at Fig. 9 and Col. 8, line 26 to Col. 9, line 63.

**As to Claim 5,** Official Notice is taken that the use of change orders was old and well known in the construction. For example, unforeseen problems arising during a construction project would cause generation of a change order. It would have been obvious to one of ordinary skill in that art at the time of the invention to include revised costs reflecting change orders in the method of *Ingram* because this would provide accurate and necessary funding for a project in its most current state.

**As to Claims 6 and 7,** *Ingram* discloses draw submissions and affidavits (inspections) at paras. 48 and 49. Waivers would be an obvious method to reduce unnecessary paperwork for relatively small variances.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (571) 272-6746. The examiner can normally be reached on 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk  
September 21, 2005

**Primary Examiner**  
**Charles R. Kyle**  
**Art unit 3624**

*Charles R. Kyle*